IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.829 of 2004
in
Land Acquisition Reference No.8 of 1989

Municipal Corporation of
Greater Mumbai ..Appellants

vs.

1. Chandanguari Amarchand
Doshi and another ..Respondents

Mr.U.J.Makhija with Mr.Vinod Mahadik for appellants
Mr.S.Malik for respondent no.1.
Mr.R.J.Mane, A.G.P.for respondent no.2

**CORAM: A.P.SHAH &**
**S.J.VAZIFDAR JJ.**
**9th March, 2005**

**P.C.**

1. This appeal is directed against the order passed by the learned single Judge in a Reference under sec.18 of the Land Acquisition Act, 1894, hereinafter referred to as the "Act". The land under acquisition is CTS No.219 (part) admeasuring 1152 sq.meters of village Kurla, Taluka Kurla District Mumbai Suburban belonging to the respondents/claimants. The land is acquired for Brihanmumbai Municipal Corporation for garden. The notification under sec.126(4) of M.R.T.P.Act, 1966l read with sec.6 of the Act was published in the Maharashtra Govt. Gazette Part I (BDS) dated 25th September, 1980. A total amount of Rs.14,96,173/-

has been awarded as compensation out of which an amount of Rs.4,65,301 is for the land belonging to the claimant. The award was made by the SLAO on 23rd September, 1986. A correction order was made on 23rd December, 1986. By this correction the entire amount was paid to the claimants.

3. The land under acquisition is situated at Lal Bahadur Shashtri Marg on southern side. It abuts the said road on southern side opposite Kamani Engineering Works. The land is vacant. The land is low lying and requires filling. The surroundings of the land are fully developed. The land is about 2 k.m. away from Kurla Railway Station on west side. The claimants claimed compensation at Rs.1250/- per sq.meter before the SLAO. The SLAO awarded the compensation at the rate of Rs.200/- per sq.meter. Being aggrieved the present reference was made under sec.18 of the Act . The reference was disposed of by the learned single Judge by order under appeal and the amount of compensation was increased from Rs.200/-per sq.meter to Rs.400/- per sq.meter.

4. We have gone through the entire record with the assistance of the learned Counsel appearing for the parties. The single Judge has placed reliance on

the award/judgment of this Court in respect of the land bearing C.T.S.No.159(part) of village Kurla being L.A.R.No.34 of 1981 in LAQ No.461 wherein the compensation awarded was at the rate of Rs.300/- per sq.meter. The said land shall hereinafter be referred to as "the instance land". In that case the SLAO had awarded the rate of Rs.260/- per sq.meter. By consent of the parties the Court has awarded the rate of Rs.300/- per sq.meter. According to the claimants the land under reference is superior than the instance land in as much as there were encroachments in the form of 17 residential tenements on the instant land and acquiring body had agreed to provide alternate accommodation to all of them whereas the land under reference is vacant and unencumbered land. Further, according to the claimants, the land under reference is abutting 130’ road whereas the instance land has proximity to a narrow street of 15’ wide. There are some other distinquishing features pointed out by the learned Counsel for the respondents like the instance land is situated with odd shape and has frontage of only 60 feet and is surrounded by slum. As against this the land under reference has a frontage of 120 feet and area surrounding the land is fully developed.

5. Taking an over all view of the matter, the learned single Judge has concluded as follows:

> "Taking into account plus and minus factors and features such as location, situation of the land under reference surrounding areas and proximity from Kurla station, availability of amenities, development in the surrounding area of residential building and amenities, in addition to the fact that the land under reference is vacant and un-encumbered, compensation to be awarded in this case should be Rs.400/- per square meters."

6. Mr.Makhija urged that there are no plus factors in respect of the land under reference except for the fact that the land under reference is abutted 130’ road whereas the instance land abutted 15’ wide Naupada road. According to the learned Counsel the land under reference had a minus factor in as much as the land requires 5 to 6 feet filling whereas the instance land was levelled land and, therefore, plus factor for abutting LBS marg and a frontage is more than offset by the fact that the land under reference required filling and, therefore, plus and minus factor cancel each other

out and, therefore, the learned single Judge ought to have held that the land under reference is not entitled to have more compensation than the instance land.

7. We are unable to accept the submissions of Mr.Makhija. There are clearly distinquishing factors in so far as the instance land and land under reference are concerned. They may not vary to large extent but yet there are the peculiar factors and special features about the land under reference. Apart from the fact that the land under reference is a free hold land and there are no encroachments on the said land, it has proximity to road namely 130 feet wide road. Additionally it has a frontage of 130’ on the road. It is regular in shape and surrounded by developed locality. As against this the instance land is encroached upon by 17 tenements. It has proximity of a narrow street of 15 feet wide and it is situated at irregular shape and frontage of only 60 feet. Moreover the instance land is surrounded by slum. In these circumstances, we see no infirmity in the finding of the learned single Judge fixing the market value at Rs.400/- per s q.meter. We may also mention that the claimants have agreed to accept statutory interest at the rate at 8% p.a.

instead of 15% as granted by the learned single Judge. Taking over all view of the matter we are of the opinion that in the circumstances of the case, the award of the learned single Judge granting compensation at the rate of Rs.400/-per sq.meter does not require any interference. However, we wish to clarify that the Award of the learned single Judge is based on the peculiar features of the land and we have also taken into consider the fact that the claimants have agreed to give up part of the claim for interest and, therefore, we confirm the rate of Rs.400/- per sq.meter.

. Appeal is accordingly disposed of.